APPENDIX A — JUDGMENT ORDER OF AFFIRMANCE OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DATED SEPTEMBER 16, 1982

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 81-3105

UNITED STATES OF AMERICA

v.

DAVID H. GROOM

David Groom, Appellant

(Criminal No. 81-00058 — W.D. Pa. — Pittsburgh)

Submitted Under Third Circuit Rule 12(6)
September 15, 1982

BEFORE: SEITZ, *Chief Judge,* ROSENN and GARTH, *Circuit Judges.*

After consideration of the contention raised by appellant, to-wit, that the evidence presented at trial was insufficient as a matter of law to support the jury's verdict of guilty, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

By the Court,

s/Seitz
Chief Judge

Appendix A

ATTEST:

s/Sally Mrvos
Sally Mrvos, Clerk

Dated: SEP 16 1982

Certified as a true copy and issued in lieu of
a formal mandate on October 8, 1982.

Test: s/ M. Elizabeth Ferguson

Chief Deputy Clerk, United States Court of Appeals
for the Third Circuit

APPENDIX B — ORDER DENYING PETITION FOR PANEL REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DATED NOVEMBER 8, 1982

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 81-3105

UNITED STATES OF AMERICA

v.

DAVID H. GROOM,

DAVID GROOM, Appellant

(Criminal No. 81-0058 — W.D.Pa. — Pittsburgh)

PRESENT: SEITZ, *Chief Judge,* GARTH and ROSENN, *Circuit Judges.*

The petition for panel rehearing concededly raises issues not presented to the district court.

ORDERED that the petition for panel rehearing is denied. See *U.S. v. Sturm,* 671 F.2d 749, 750-51 (3d Cir. 1982).

s/ Seitz
Collins J. Seitz
Chief Judge

DATED: November 8, 1982

APPENDIX C — ORDER TO STAY MANDATE UNTIL DECEMBER 15, 1982 OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No, 81-3105

UNITED STATES OF AMERICA

vs.

DAVID H. GROOM,

Appellant

Pursuant to Rule 41(b) of the Federal Rules of Appellate Procedure, it is O R D E R E D that issuance of the certified judgment in lieu of formal mandate in the above cause be, and it is hereby stayed until December 15, 1982.

s/ Seitz
Chief *Judge*

Dated: NOV 18 1982

APPENDIX D — ORDER GRANTING PETITION TO FURTHER STAY MANDATE OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DATED NOVEMBER 18, 1982

CLARK, McGILL & SEAY
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IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

COURT OF APPEALS

CRIMINAL NO. 81-3105

W.D. PA. - PITTSBURGH

UNITED STATES OF AMERICA

vs.

DAVID H. GROOM

AND NOW, this day of , 1982, it is hereby ORDERED that Appellant's Petition for Stay of Mandate Pending Application For Writ of Certiorari to the Supreme Court,

Appendix D

pursuant to F.R. App. P. 41 (b) is Granted for a period of thirty (30) days.

BY THE COURT:

_____

J.

APPENDIX D — PETITION FOR STAY OF MANDATE TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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FOR THE THIRD CIRCUIT

COURT OF APPEALS

CRIMINAL NO. 81-3105

W.D. PA. - PITTSBURGH

UNITED STATES OF AMERICA

vs.

DAVID H. GROOM

AND NOW, this 12th day of NOVEMBER, 1982, DAVID H. GROOM, Appellant in the foregoing Appeal and Petition in the herein petition, by his counsel, THOMAS L. McGILL, JR., ESQUIRE, hereby petitions, pursuant to F.R. App. P. 41, for a stay of the issuance of the mandate of this Court pending

application for a writ of certiorari to the Supreme Court. In support of the petition, counsel for Appellant offers the following:

1. On April 9, 1981, Mr. Groom was indicted on sixteen (16) counts of violation of Title 26, U.S.C. §7206(2). Petitioner was charged with wilfully and knowingly advising the preparation and presentation of various income tax returns of others which were allegedly false and fraudulent as to material matters. The matter was tried in the United States District Court for the Western District of Pennsylvania before the HONORABLE MAURICE B. COHILL. The trial jury adjudged him guilty as to all counts. On November 6, 1981, Mr. Groom was sentenced to two years imprisonment to be followed by two years probation, and a fine in the amount of $16,000 was imposed.

2. Petitioner, by his trial counsel, filed a Notice of Appeal on November 11, 1981. The United States Court of Appeals for the Third Circuit affirmed the judgment of the District Court in a judgment-order dated September 16, 1982. Mr. Groom replaced his original counsel, THOMAS B. RUTTER, ESQUIRE, and secured the services of present counsel on September 22, 1982.

3. On September 29, 1982, present counsel filed a Motion for Enlargement of Time Within Which to File Petition for Rehearing. That motion was granted by this Honorable Court, and the time for filing was extended to October 29, 1982. Petitioner's Petition for Rehearing was denied on November 8, 1982.

4. The Petitioner intends to file a petition for Writ of Certiorari to the Supreme Court of the United States. Federal Rule of Appellate Procedure Rule 41(b) provides that a stay of the mandate may be granted pending application for a writ of certiorari to the Supreme Court of the United States.

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WHEREFORE, it is respectfully requested that this Court grant a stay of the mandate pending the application for a writ of certiorari to the Supreme Court of the United States by the Appellant.

Respectfully submitted,

CLARK, McGILL & SEAY

BY: Thomas L. McGill, Jr.
THOMAS L. McGILL, JR.,
ESQUIRE

APPENDIX E — AFFIDAVIT OF PETITIONER'S SPOUSE ON PETITION FOR REHEARING

IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

CRIMINAL NO. 81-3105

UNITED STATES OF AMERICA

vs.

DAVID H. GROOM

Affidavit of ELAINE GROOM in support of APPELLANT'S PETITION FOR REHEARING

State of Pennsylvania

:ss.:

County of Philadelphia

Elaine Groom, being first duly sworn, deposes and says:

1. I am the wife of the above-named defendant, and I have personal knowledge of the matters hereinafter referred to, and make this affidavit in support of my Petition for Rehearing.

2. I was present throughout the trial of my husband in the United States District Court for the Western District of Pennsylvania from September 21, 1981 to October 5, 1981. My husband was represented by Thomas B. Rutter, Esquire, who frequently consulted with my husband, in my presence. At the conclusion of the testimony of one of the government's expert witnesses, my husband told Mr. Rutter that he wished to take

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the stand and testify on his own behalf. Mr. Rutter responded with a warning to my husband that if he took the stand, he would withdraw immediately as his lawyer. He stated to my husband that he could always get another attorney or even represent himself at trial. My husband declined either of those options, because he did not see how he would be able to handle them. Despite his desire to do so, my husband did not take the stand.

s/ Elaine Groom
ELAINE GROOM

Sworn to and subscribed
before me this day of
September, 1982.

_____
NOTARY PUBLIC

APPENDIX F — EXCERPTS OF TRIAL TRANSCRIPT IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

[pp. 335-341]

* * *

about the coal brokerage, yes? A. Yes.

Q. And also about coal production, yes? A. Yes.

Q. The Eastern Coal Resources, was that engaged in coal business in Kentucky as well as in Pennsylvania? Where was this place of operation? A. Eastern Coal Resources, the main place of operations was in our office. I mean, that is where the main checkbook was.

Q. And was the business it was engaged in coal production? A. Coal brokerage.

Q. Coal brokerage. That was in addition to B & G then? A. Yes, sir.

Q. Okay. Now, we have heard about — I am going to skip the non-coal companies for a moment. We have heard about Eastern Deaton Coal Company. That was a partnership that was formed, wasn't it? A. Yes, sir.

Q. That was a partnership formed between, what, Eastern Coal Resources, or Mr. Groom personally? A. Mr. Groom.

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Q. Mr. Groom personally and a Dr. Deaton, was it, or Mr. Deaton? A. Robert Deaton.

Q. What was the purpose of that partnership as you understood it from being in the office and working with the books and records of that company? A. It was to operate a coal mine, strip job, located in Harlan, Kentucky.

Q. And that was a strip job which it took over from this person in Harlan, Kentucky, yes? A. Yes, sir.

Q. And Mr. Garrett asked you a series of questions about these checks that the judge has told the jury to compartmentalize, but there were payments to and on half of this strip job down in Harlan, Kentucky; is that so? A. Yes.

Q. And when you were talking about payments made to creditors of Mr. Jones, do you remember those answers? A. Yes.

Q. Mr. Jones was the previous strip operator in that location; is that right? A. Yes, sir.

Q. And are we to understand that part of the way in which Mr. Jones was paid for taking over coal leases for stripping was that Mr. Jones' creditors were paid? A. Yes, sir.

Q. That is, instead of giving the money to Jones who would then give it to the creditor, it was given directly to the creditor? A. Correct.

Appendix F

Q. In connection — let me ask you this question: Were you working with Mr. Groom when this Harlan strip operation was commenced? A. Yes, sir.

Q. And did he ever discuss it with you in your presence, or did you know anything about the business other than the strippling operation? A. With relationship to what?

Q. Did you have the impression that Mr. Groom was embarking upon this stripping operation in Kentucky for the purpose of making a profit, or was he just throwing money away? A. For the purpose of making a profit.

Q. Based upon what you saw and heard, did Mr. Groom at that time — was it your impression that he considered this stripping operation in Kentucky to be a good business investment? A. Yes, sir.

Q. And was the mine in fact operated, the stripping operation, in fact operated? A. Yes, sir.

Q. That is where he was spending a lot of his time in 1978 and '79 when you ultimately decided to go on and find other employment? A. Yes, sir.

Q. The Eastern-Plocus Resources Company, that is a partnership formed between Mr. Groom and Mr. Van Plocus? A. Correct.

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Q. What was the purpose of that partnership? A. As I understood it from Mr. Groom, they were going to try and locate land which had coal deposits on it, try to arrange leases on those lands, and then in turn release it or sell the leases to jobs, or Mr. Groom at one time even talked about possibly shipping the coal or even deep mining the coal.

Q. Do you know whether in fact Eastern-Plocus Resources ever acquired any leases or acquired any acreage? A. No, sir, I do not.

Q. But, in any event, as you described it, one of the ideas involved in Eastern-Plocus was to acquire leases; that is, Mr. Groom's partnership would get the leases, and then, if not mine it themselves, to sell the leases to other people? A. Correct.

Q. Are you acquainted with the term "lease broker" in the coal business? A. Only in a general sense.

Q. And this kind of business where one person buys leases and then sells them to a third person, and he doesn't mine it himself, that is the lease brokerage business; isn't it? A. Yes, sir.

Q. And that is a little different from the coal brokerage business, isn't it? A. Yes.

Q. Now, let's go and look at the other companies. All of those activities are being engaged

in: the C.P.A., the coal business, and all these other activities are all being engaged in at the same time? A. Yes, sir.

Q. Not meaning an ethic [sic] slur, but sometimes like a Chinese fire drill; would that be fair to say? A. Yes, sir.

Q. Okay. Now, the other companies that Mr. Garrett asked you about were a Pow-R-Tron — You told us that was a corporation bought by Mr. Groom, and it manfactured electromagnetic hammers, yes? A. Yes, sir.

Q. What was the financial condition of that company when it came to Mr. Groom's attention? A. It was in dire financial trouble. That is the reason the gentleman who had owned Pow-R-Tron had been an accounting client of Mr. Groom, and he came to Mr. Groom and said, you know, "I have this second business, and it is losing money left and right, and I want to get rid of it. See if you can find a buyer." And Mr. Groom could not find a buyer for it. But in going out and going over the inventories and so on and so forth, he thought it was a good buy. So he bought it himself.

Q. He became the owner of Pow-R-Tron? A. Yes, sir.

Q. Did you, Miss Ribbeck, ever have any involvement with that company; did you do any business with it; did you do any work for

it? A. Yes, sir, I kept the books on Pow-R-Tron, and I also, the first year that we purchased Pow-R-Tron I spent a good deal of my time — as a matter of fact, I spent, I would say, probably 85 percent of my time the first year after Mr. Groom purchased it trying to pick up the sales for Pow-R-Tron, contacting people who bought our hammers for lease purposes, you know, that they would rent them out to other people like rental places, you know, to try and get them to start buying the hammers again. I spent a great deal of time the first year after Mr. Groom purchased the Pow-R-Tron company trying to pick up the sales of the business.

Q. This was in addition to your performing all the other duties that you described for us as a secretary and bookkeeper and so forth? A. Yes, sir.

Q. When Pow-R-Tron was acquired by Mr. Groom, when you were working for it, did you and he consider it to be a viable business entity, a wise business investment, or were you throwing money away? A. Mr. Groom thought that it was a very wise investment. He felt that, you know, it could be built up into something quite respectable.

Q. And another company that you mentioned is Elaine Aire. That Elaine, again, is Mr. Groom's wife's name, yes? A. Yes.

Q. And the word "Aire." And you say it owned two things: One was a computer, yes? A. Yes.

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A. Yes, sir.

Q. In this case? A. Yes, sir.

Q. And was the reason for that that you had indicated that you would not answer questions unless you had such an order granting you immunity from prosecution on the basis of whatever testimony you would give? A. Yes, sir.

Q. Now, Mr. Harmon, are you acquainted with the defendant David H. Groom? A. Yes.

Q. How did you first become acquainted with Mr. Groom? A. I think the first original contact with Mr. Groom was I was leasing a piece of property, and he represented some of the people on the opposite side, and that is how I got to meet Mr. Groom.

Q. Do you recall about when that was? A. Must have been around '71 or '72, in that bracket.

Q. Subsequent to your initial meeting with him, did you generate any kind of business relationship with Mr. Groom? A. I don't understand the question, sir.

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[pp. 473-474]

Q. And, of course, the government right away saw the error of its ways and gave you your money back, didn't they? A. About three years later after they checked and rechecked two, three or four times.

Q. Did you or Mr. Groom have to go to Harrisburg or to court or to Pittsburgh or someplace like that to get the money back? A. I didn't, but I am almost sure Mr. Groom did.

Q. In other words, if the jury and I can understand it correctly, when Mr. Groom on behalf of your company went to the authorities and said, "Mr. Harmon's company paid you too much taxes," they said, "No, no, we don't agree with that," and they quarreled with him; they argued back and forth on that subject, right? A. Yes. I left that up to Mr. Groom. He is a tax man, and I am not.

Q. And you say about three years later he finally persuaded them he was right and got your money back? A. I got my money back.

Q. 100 percent of it? A. No, if I recall right, I think it was $87,000.

Q. Now, likewise, sir — Well, I will not say likewise — after he had represented you in this problem with the tax people, did he then become the regular general accountant for you and your

company and the members of your family? A. Yes.

Q. And indeed was he the administrator or the executor of your brother's estate when he was killed in that plane crash? A. Yes, he was the administrator of my brother's estate.

Q. And your brother's name was Sam? A. Yes.

Q. And this accident also took your mother, sir, didn't it, sir? A. Yes.

Q. It occurred in 1973? A. Yes.

Q. Mr. Groom then was the executor, the person in charge of collecting and administering the assets of this estate, right? A. Yes.

Q. And you trusted him and had confidence in him then, didn't you?

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A. Well, the tipple is where the coal is brought. It is located on the railroad. And all the coal is trucked into this particular point. And from there it is processed and loaded on rail. And a few years ago back why we run washing plants and air tables which, you know, it is complicated loading, but the last few years why we do not run them. They are still available, but we don't run

them because the environmental laws are just too complicated.

Q. I would like to direct your attention to the year 1974. How was business in 1974 in terms of business; was it a good year or a bad year? A. Well, up in through '72 or up through years and years, the coal business was really a struggle to survive. In 1974, whenever, that was one of the years facing ahead of the strike of the United Mineworkers, so they started to stockpile coal. Everybody did. So at that particular time '74 was starting to be making a lot of business. And we was starting to getting some decent prices for our product.

Q. And as a result of that, did you anticipate that you would be making a lot of money in that year?

MR. RUTTER: I object to the leading of the witness now in the substantive testimony.

THE COURT: We will sustain.

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Q. Okay. I think my question was whether you undertook to consult with anybody in connection with this expectation of a lot of income? A. Yes. Mr. Groom was my accountant, so I consulted with him.

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Q. What was the nature of the conversation that you had with him at that time? A. Well, you know, I can't recall the words, but I think, you know, it boiled back to we was expecting a good year, and I was wondering if there was somehow that I could, you know, defer paying of taxes, you know, on just one good year.

Q. Did Mr. Groom respond to that inquiry by yourself right away? A. No, he said he would have to do some research work, and he would get back to me.

Q. And at a later time did he get back to you? A. Yes.

Q. Now, would you please tell the ladies and gentlemen of the jury what Mr. Groom said to you when he got back to you? A. Well, I am not sure, but I think it was a month or six weeks later that Mr. Groom got back to me and he said he had done a lot of research work and that he had come up with a brokerage outfit that the money could be paid into the brokerage there and wouldn't be charged taxes for it at that moment.

Q. Now, the money that he was talking about which could be paid in, what money was that? A. Well, that would be something, you know, receipts of some of the coal from Harmon Mining Company.

Q. You mean the receipts for your normal business transactions?

MR. RUTTER: That is objected to, Your Honor.

THE COURT: Sustained.

BY MR. GARRETT:

Q. Well, when you say receipts for the Harmon Mining Company, what do you mean by a receipt? A. Well, maybe the receipts wasn't the right word. But some of the money that the coal was sold, the money that was paid for the coal, would be, was funneled into what at that time was called, it would be called B & G, and that it would go into B & G rather than go across my books at that particular time.

Q. Let me get back to your reference to the books. But this money which was to be from your coal sales, how was it to be put into the brokerage; what did Mr. Groom tell you about how that could be done? In other words, what I am asking —

MR. RUTTER: Excuse me, Your Honor, Might . . .

* * *

[pp. 350-352]

engaged in research using these books? A. Yes, sir.

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Q. Can you tell us, please, some of the details about that, what you remember about that occurrence? A. As I said, in 1974 the price of coal was quite high. Mr. Groom had expressed to me a concern about the amount of money that he was sure that several of his coal clients would be earning by the end of the year. And he expressed to me an interest in seeing that if he could not work out some kind of a tax shelter for these people that he could get them into that it would decrease the amount of taxes that they would have to pay at the end of a year. So he did something which was quite out of the ordinary for Mr. Groom, he gave me specific instructions that he was not taking any telephone calls, and he shut the doors in his office, which is something that Mr. Groom did not do in a normal course of events. He did it so rarely that when the door was shut I knew just to not disturb him. And for a period of about three weeks Mr. Groom remained in his office with the door shut and did not take phone calls. And he did research work.

Q. And how do you know he did research work in his office with the door closed and the phone turned off? A. Because I kept taking him in cups of coffee all the time. And I just put the coffee at his elbow, and he would just be literally surrounded by those volumes of books. I remember him actually sitting on the floor, and a set of volumes to the right of him, and another one to the left, and one up above, and he was sitting there on the floor with these volumes just literally surrounding him.

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Q. Now, at the end of the period of time when he had been in his office with the door closed, as you described it, doing research, are you acquainted with any person or persons whom Mr. Groom consulted in connection with this research that he had done? A. Yes, sir. At the end of the three-week period he came out and he said to me, he said, "I think I am on to something. I think I have something here. I want to check it out first. So he asked me to place a call to a gentleman, and I regret to say that I don't remember his name, but it was a gentleman who was a certified public accountant with the firm of Peat, Marwick & Mitchell here in Pittsburgh. And then he, at the end of the conversation, he also asked me to place a call to a gentleman he described as a tax attorney in Philadelphia by the name of Wasserstrom.

Q. Peat, Marwick & Mitchell, who is that, please, so the jurors may be informed? A. Peat, Marwick & Mitchell is a very large accounting firm here in Pittsburgh. And when Mr. Groom first started doing accounting work, he worked for Peat, Marwick & Mitchell.

Q. And were you a party to that conversation; did you listen in on the conversation between Mr. Groom and this Peat-Marwick accountant here in Pittsburgh? A. Not that I recall, no, sir, but I did place a call for him.

Q. And the telephone call to the attorney who Mr. Groom described as what, a tax attorney? A. Yes, sir.

Q. And you recall the name as being what, please? A. Wasserstrom.

Q. And that attorney is located where, please? A. In Philadelphia.

Q. Did you listen in on that conversation or partake in it in any way? A. No, sir.

Q. Therefore, may we understand that you cannot tell us what the discussion was and what advice or information Mr. Groom received?

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Company's books on their ledger sheets and deposited in the bank.

Q. So the money then, when it came back, would be entered on the books? A. Right.

Q. How would it be entered on the books; what would that payment be called on your books? A. Well, you know, I am not 99 percent sure. I would assume it was entered as income under coal sales but you would have to get the girls, the secretaries, to verify it. I am almost sure when it come back, I am sure, or almost positive, it come back as coal sales entered into the book.

MR. RUTTER: Under those circumstances, sir, I move to strike.

THE COURT: We will sustain the objection and we will direct the jury to disregard the witness' last answer. He did testify that he was not sure, and we will ask you to put that answer out of your mind.

BY MR. GARRETT:

Q. What did Mr. Groom advise you, sir, as to payment of taxes on these moneys which would first go into the B & G Coal Company and then come out and go into your books when they came out? A. If I recall right, I would not be charged. . .

[pp. 448-450]

meeting at Slippery Rock, I think there was a check made out about $15,000 to buy out a stockholder to come out of B & G at that particular time.

Q. When you refer to Slippery Rock, what was that? A. That was the shopping center plaza that we was involved in.

Q. You had an interest in Slippery Rock Plaza? A. We was just an investor in it.

Q. That interest was preexisting, or — Let me ask you this: Did that interest exist prior to this event that you are telling us about? A. That was back in '69 or '70, in that area '70 or '71 I think that took place. In what time of the year,

or what year, I couldn't even tell you. In fact, it might even be after '77.

Q. At any time, Mr. Harmon, did Mr. Groom ask you whether or not money from the B & G account should go into an organization known as Pow-R-Tron? A. Not to my knowledge, not in my memory.

Q. Do you know what Pow-R-Tron is? A. Yes.

Q. What is Pow-R-Tron? A. Pow-R-Tron was a small manufacturing plant that Mr. Groom — I don't know how much he owned of it. It made electric hammers to my knowledge.

Q. Do you have any interest or involvement in that company? A. No.

Q. Did you ever authorize any expenditure to be made in a company known as Elaine Aire, Inc.? A. Never heard the name.

Q. You are not familiar with that at all? A. No.

Q. You have no interest in it? A. No.

Q. Did you ever give Mr. Groom authorization to expend moneys from the B & G account for Contact, Inc. A. No.

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Q. Do you know what Contact is? A. Yes.

Q. Did you have any personal interest in Contact yourself? A. Yes, Harmon Mining Company owned some certain amount of stock in Contact.

Q. Can you recall how much that was? A. I think the original investment was $10,000. I don't recall how many shares of stock, but there was investments of $10,000.

Q. Other than that investment, did you have any other interest in it at all? A. No.

Q. Did you play any role at all in the operation of that business? A. No.

Q. Did you ever authorize Mr. Groom to expend any moneys from the B & G Company account for Eastern Coal Resources? A. No.

Q. Do you know what Eastern Coal Resources is? A. I heard the name, yes.

Q. Other than having heard the name, do you know anything about it? A. No.

Q. Do you have any interest or involvement in it at all? A. No.

Q. How about Eastern Deaton Coal Company, Mr. Harmon; did you authorize any expenditures for that purpose? A. No.

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Q. Are you familiar with that company? A. I have heard the name, yes.

Q. That is the extent of your familiarity with it?

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[pp. 1046-1047]

* * *

to be asked with reference to that specific question, to be asked with reference to some particular transactions. So that is why I asked that particular question with respect to these other transactions.

THE COURT: We will let the witness answer.

BY MR. GARRETT:

Q. You may answer the question. A. May I have it again?

Q. Yes, sir. With respect to the check issued to John Harmon in the name B & G Coal Company, is there any legal theory for him not reporting that for Harmon and the Harmon partnership not reporting that as income during the — A. I felt —

MR. RUTTER: So the record may be clear, Your Honor, I object to the question again.

THE WITNESS: I felt that it was Harmon's coal that was being sold. He said so. Therefore, the money for the proceeds of that coal was Harmon's income.

MR. GARRETT: Thank you.

No further questions.

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RECROSS-EXAMINATION

BY MR. RUTTER:

Q. Agent Gloekler, perhaps we can simplify this portion of your examination by asking you this question and getting your answer: You have expressed an opinion concerning the reportability by Harmon of the checks to B & G. Would you concede for me, sir, that there are those who might have a difference of opinion on that subject with you? A. Based on the testimony that I heard, sir, that was my opinion based on the testimony and the records that have been admitted into evidence.

Q. I understand that is your opinion. All I am asking you: Would you agree with me that there are those who might hold a different opinion? A. Possibly, yes, sir.

Q. That is say, this is a matter of difference of opinion between people of equal expertise? A. Might well be, yes, sir.

Q. And the reason I asked, sir, is earlier today I asked you about Section 451 of the Internal Revenue Code. And as I understand your testimony, you said that you were not as expert on that — we will say it that way — as expert on that as you are on some other aspects of the Internal Revenue Code; is that fair? A. Yes, sir.

Q. And Section 451 of the Internal Revenue Code is the section to which we look to find all the court's decisions which relate to this particular question, isn't it, sir? A. Yes, sir.

[p. 1051]

Q. Okay. All I am saying to you, Agent Gloekler: The opinions you expressed about when you report a check and what are receipts to whom, they are things that you have an opinion about, yes? A. Yes, sir.

Q. But people with equal competence and equal training could have a difference of opinion, couldn't they, sir? A. Yes.

Q. Neither one of you is wrong in a way that should make you go to jail, are you? A. No, sir.

Q. Suppose you were wrong on the question, would you think you should go to jail for being wrong in your opinion? A. No, sir.

Q. In response to Mr. Garrett's questions, that $113,000 item in 1977 which you say you didn't take into account because it is over in '78 — A. Yes.

Q. — that is one of these negotiated items? A. Yes.

Q. Even if we take that $113,000 out, we still have a lot of negotiated items which Mr. Harmon

took out and kept secret to himself and didn't tell anybody about and didn't report on his income tax; is that right? A. Appears that way.

[p. 1373]

But Mr. Gonta came and took the witness stand and testified. And we can put aside the errors of mathematics and such that he had on his summaries, and we can also put aside the fact that he didn't calculate the depletion correctly. Remember he made that mistake? I don't want to pick on him. I think it is important for you to understand where we are. Mr. Gonta, you know, I said to him — We did the arithmetic. You notice when I started to ask him about that, it was a little difficult getting an answer for a while while he was trying to figure out had [sic] he made a mistake, and, if so, how he was going to explain it without having to admit that, yes, he had made a mistake. And he got the depreciation wrong to the tune of $43,000 in one year. He, the expert, who these people had come in and say that David Groom didn't know what he was doing. In any event, remember Gonta got the depletion wrong. And so after Mr. Garrett had asked him a bunch of questions, the last one which Mr. Garrett said to him was, "Well, Mr. Gonta did you ever have a dispute with anybody in the IRS, any difference of opinion, as to what was gross receipts?" "Oh, no. No, no," and then you will remember I got up and I think I asked the question from here: "Now, Mr. Gonta, did you ever have any dispute with anybody in private practice, . . .

APPENDIX G — RELEVANT DOCKET ENTRIES

Date	Entry
4/9/81	A true bill.
4/9/81	Indictment filed.
4/9/81	Request of U.S. Atty. for issuance of summons; deft. to appear 4/23/81 to post $25,000 or bond and file appearance of counsel.
4/9/81	Summons issued.
4/16/81	Summons returned executed by U.S.M. 4/14/81.
4/23/81	Deft. arraigned before Mag. Sensenich and pleads NOT GUILTY.
4/23/81	Appearance of Alan Turner, Esq. and Thomas B. Rutter, Esq. (From Phila.).
4/23/81	The following rec'd from M. Sensenich: Record of Mag.'s Proceedings showing Initial Appearance of 4/23/81; Deft. not to depart continential U.S.; Bail Reform Act #2; $25,000.00 OR bond.
4/28/81	Entry of Appearance filed by Fred Mercer, Esq.
4/30/81	Consent Motion for Extension of Time within which to File Pretrial Motions filed by deft. with proposed order thereon.

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5/1/81	Order entered directing that deft. have until 5/25/81 to file pre-trial motions. (Cohill, J).
5/18/81	Order entered directing that the last date upon which the trial of this case may commence is extended for 73 days from July 2, 1981 to Sept. 15, 1981. (Cohill, J.) (Exhibit A attached).
9/21/81	Jury selection. 10:45 a.m. to 1:45 p.m. before Judge Cohill.
9/21/81	Jury trial begin and continues before Judge Cohill and a jury. (Deft's oral motion for sequestration of witness — granted) (Govt oral motion for sequestration of witnesses — GRANTED) (Govt's oral motion not to sequester Special Agent — GRANTED but question reserved as to whether testimony will be relevant).
9/22/81	Jury trial continues.
9/23/81	Jury trial continues. (Deft's motion to receive immunity materials on John Harmon prior to his testimony — GRANTED).
9/24/81	Application by USA for immunity of John J. Harmon and order entered GRANTING same. (Cohill, J.).
9/24/81	Jury trial continues.
9/25/81	Application by USA for immunity of Thomas F. Huff and order entered granting same. (Cohill, J.). Signed 9/24.

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9/25/81	Application by USA for immunity of Shirley G. Huff and order entered granting same. (Cohill, J.). Signed 9/24.
9/28/81	Jury trial continues.
9/29/81	Jury trial continues.
9/29/81	Order entered re: Immunity of Kenneth C. Harmon, filed. (Cohill, J.).
9/30/81	Jury trial continues.
10/1/81	Jury trial continues.
10/2/81	Jury trial continues and concludes before Judge Cohill, memo filed. (Rep. Colvin Vogel) (Deft's motion for directed verdict — DENIED).
10/5/81	Order entered re: jury accommodations. (Cohill, J.).
10/5/81	Verdict returned by jury on 10/2/81 finding deft. GUILTY on Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, filed.
10/5/81	Notice setting sentence for 11/6/81 at 9:00 a.m. before Judge Cohill, filed.
10/9/81	Motion for a judgment of acquittal or, in the alternative, for a new trial filed by deft. with two proposed orders attached.

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10/9/81	Application for extension of time within which to file post-trial motions filed by deft. with proposed order.
10/9/81	Order entered directing that time for filing post-trial motions is extended to 10/26/81; Briefs in support of such motions due 11/6/81; and Arguments on such motions set for 11/6/81 at 9:00 a.m. Further ordered that the request for filing such motions be extended to 14 days after the filing of the transcript is DENIED. (Cohill, J.).
10/23/81	Petition to amend docket and enter order reflecting grant of continuance in interests of justice, filed by US Atty. with proposed order thereon.
10/26/81	Order entered directing that from 9/8/81 until 9/21/81 on consent of both parties; that period of time was excludable delay under the Speedy Trial Act under the nature of a continuance. (Cohill, J.).
11/6/81	Hearing on Post-Trial Motions held before Judge Cohill, memo filed. (Rep. C. Vogel) (Deft. Motion for Judgment of Acquittal and Motion for New Trial — BOTH DENIED) (Bond continued pending appeal).
11/6/81	SENTENCE: Count 1: 2 years imprisonment and $1,000.00 fine, no costs. Counts 2-16: 2 years imprisonment on each count. Execution of

sentence as to imprisonment only is suspended and the deft. is placed on 2 years probation on each count to run concurrently with each other and consecutive with Count 1, and a fine of $1,000.00 on each count. It is the intention of the Court that the deft. be sentenced to 2 years imprisonment; be fined a total of $16,000.00 and placed on 2 year probation after imprisonment. No costs. (Cohill, J.).

11/6/81 Pursuant to sentence of 11/6/81 before Judge Cohill, judgment is hereby entered against the deft. in the amount of a $16,000.00 fine. Gilbert W. Conley, Clerk.

11/16/81 NOTICE OF APPEAL filed by deft. appealing sentence entered 11/6/81. Letters.

11/19/81 Order entered 11/18/81 directing original record and exhibits be maintained for use by Court Reporter Colvin Vogel and forwarded to the Circuit when transcript is complete. (Cohill, J.).

11/19/81 CC of order of 11/18/81 and letter forwarded Ct. of Appeals.

12/28/81 CC of order dated 12/23/81 setting briefing schedule rec'd from the Ct. of Appeals and filed with letter advising case docketed at No. 81-3105.

3/15/82 Transcript of jury trial held 9/21/81 before Judge Cohill filed. (Rep. C. Vogel) (Vol. I).

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3/15/82	Transcript of jury trial held 9/21/81 before Judge Cohill filed. (Rep. C. Vogel) (Vol. II).
3/15/82	Transcript of jury trial held 9/21/81 before Judge Cohill filed. (Rep. C. Vogel) (Vol. III).
3/16/82	ORIGINAL RECORD & EXHIBITS COMPLETE FOR PURPOSES OF APPEAL. CC of docket entries mailed U.S. Ct. of Appeal.